

PRIVY COUNCIL

Surapati Roy

Vs.

Ram Narayan Mukerji

P. C. A. No. 80 of 1921 and Bengal Appeals Nos. 5 and 6 of 1920

(Lord Dunedin, J. Sir John Edge and Mr. Ameer Ali.JJ.)

19.4.1923

JUDGMENT

Mr. Ameer Ali J.

1. The consolidated appeals arise out of two suits brought by the plaintiff, a putnidar under the Burdwan estate, to recover rent from the defendants in respect of three dar-putnitaluks they held under him. The Burdwan Raj contains a large number of putni tenures, and sub-infeudation is recognised and largely given effect to in that estate. Not only are putnidars entitled to grant sub-tenures called dar-putni but the dar-putnidar on his side can grant subordinate tenures under himself which bear the designation of se-putni. The plaintiff's case is that the fifteen defendants whom he sued for the dar-putni rent of the three dar-putnitaluks were all jointly interested in the under-tenures.

2. The defendants, other than defendants, 3, 14, and 15 contended that although originally they held a share in the dar-putni tenure, they had, on the 25th August, 1905, conveyed their 12 annas interest to one, Ramtarak Bhuttacharji as the benamidar of the defendants 3, 14 and 15, and that two years later viz., in June, 1908, Ramtarak had, by a registered document, renounced all interest in the dar-putni in favor of the defendants 3, 14 and 15, acknowledging that they were the real purchasers and that he was only their furzidar. The defendants, other than 3, 14 and 15, accordingly urged that they were not liable for the rent of the under-tenure and were wrongly sued.

3. It appears that after the execution of the deed of sale in 1906 the plaintiff had instituted against these several defendants including defendants 3, 14 and 15, suits for rent in which the defendants other than defendants 3, 14 and 15, denied their liability on the ground that they had parted with their interest in favour of their co-defendants

3, 14 and 15, and that in those suits the Court before whom the question came for trial had held that the contending defendants had failed to establish that the transaction was *bona fide* and not a mere sham; and had declared that, notwithstanding the transaction of 1906, the plaintiff was entitled to rent from all the defendants, and had decreed his claim accordingly.

4. There were further suits between the parties; the same contentions were raised by the defendants other than defendants 3, 14 and 15; but the defense was disallowed on the ground that the question relating to their liability was *res judicata*. The defendants 3, 14 and 15, thereupon, on the 6th July, 1914, executed a fresh document in favor of their co-defendants 3, 14 and 15, by which they purported to confirm the transaction of 1906 and re lease in the latter's favor whatever right and title they possessed in their 12 annas share of the dar-putni.

5. The present suits are brought for rents partly due for a period prior to July, 1914 and partly for a period thereafter. The Munsif, before whom the cases came for trial, held that the rent for the period anterior to the execution of the last document viz., the release of 1914, came within the terms of the previous decisions and that, consequently, the matter was *res judicata*; but with regard to the period after the execution of the document of the 6th July, 1914, he held that the transfer by the contending defendants to their co-defendants 3, 14 and 15 was valid, and that, therefore, they were entitled to be absolved from liability for all subsequent rent.

6. He accordingly decreed the plaintiff's claim for the rent of this latter period against defendants 3, 14 and 15 alone.

7. From this part of the Munsif's decree, the plaintiff appealed to the Subordinate Judge of Hooghly, who on the 28th February, 1917, dismissed the appeal and affirmed the decree of the Munsif.

8. He held that the point in controversy was concluded by the decision in the case of *Hemendra Nath Mukerji v. Kumar Nath Roy*¹ that the deed which the contending defendants had executed ratifying the previous transaction of sale was not only a "disclaimer of any subsisting right or interest of the executant's but also purported to vest whatever right or interest they might, by reason of the decisions of Courts in the previous rent suits", be said to have had in the properties covered thereby, in the defendants 3, 14 and 15, as from the date of its execution."

9. He held further, in respect of the contention, that there was no consideration for this

last document that it did not concern the plaintiff, whether a consideration passed or not between the two parties to the transaction, that was a matter between them and them alone; and that the plaintiff himself had ample security in the dar-putni tenures. He further held that the defendants 3, 14 and 15 were in possession of the property. He accordingly as already stated, dismissed the plaintiff's appeal.

10. The plaintiff not content with this decision, appealed to the High Court of Calcutta, which reversed the judgment of the Subordinate Judge and decreed the plaintiff's claim as against all the defendants.

11. From these decrees of the High Court in the two suits the contending defendants have appealed to this Board.

12. A preliminary objection has been taken as to the competency of the appeal, on the ground, firstly, that the subject-matter is below the appealable value; and secondly, that the certificate granted by the High Court is not sufficient. On both points in their Lordships' opinion the objection fails. The subject-matter in dispute relates to a recurring liability and is in respect of a property considerably above the appealable value. The certificate in the circumstances is quite in order.

13. The reasons upon which the learned Judges of the High Court have based their judgment are somewhat involved, but closely examined, they amount to this : that as it had been held in the previous suits that there was no consideration, and as there could be no transfer without the proof of consideration, the transaction of July, 1914, is affected by the previous decisions, and the plaintiff was entitled to go on suing the defendants as he had done heretofore.

14. There are certain passages in the judgment which incline their Lordships to think the learned Judges did not clearly apprehend the legal position of the parties in relation to the provisions of Section 12 of the Bengal Tenancy Act. They say in one place :-

"It cannot be disputed that if the title is perfected by a proper deed, and for consideration, the former decisions cannot operate as res judicata," and then go on to say :-

"But there is no consideration apart from the consideration of the previous kobala; and the question of consideration under the kobala is res judicata."

15. In the case of *KristoBulluvGhose v. KristoLal Singh* ²a transfer of a permanent

tenure, by a registered document was held to be complete under Section 12 of the Bengal Tenancy Act, as soon as the document was registered, and the same view was expressed in the case of *HemendraNathMukerji v. Kumar Nath Roy*, ³already referred to. Their Lordships consider that the present controversy is covered by the latter decision.

16. Their Lordships are of opinion that the judgment and decree of the High Court should be set aside and the order of the Subordinate Judge restored. The appellants will be entitled to their costs here and in the High Court.

17. Their Lordships will humbly recommend His Majesty accordingly.

Appeal allowed.

Cases Referred.

1. (1908) 12 CWN 478
2. (1889) 16 Cal 642